

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE ANTHONY J. BATTAGLIA, JUDGE PRESIDING

IN RE INCRETIN-BASED THERAPIES, ) CASE NO. 13-MD-02452-AJB  
PRODUCTS LIABILITY LITIGATION )

----- ) SAN DIEGO, CALIFORNIA  
JULY 1, 2014  
11:18 A.M.

THIS DOCUMENT RELATES TO ALL CASES )  
\_\_\_\_\_)

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
RE: CASE MANAGEMENT CONFERENCE

OFFICIAL REPORTER: JEANNETTE N. HILL, C.S.R.  
(619) 702-3905

JULY 1, 2014

## 1 SPEAKING APPEARANCES:

2 FOR PLAINTIFFS: HUNTER J. SHKOLNIK, ESQ.  
3 NAPOLI BERN RIPKA SHKOLNIK & ASSOCIATES  
4 111 CORPORATE DRIVE, SUITE 225  
5 LADERA RANCH, CALIFORNIA 92694

6 MICHAEL K. JOHNSON, ESQ.  
7 JOHNSON BECKER PLLC  
8 33 SOUTH SIXTH STREET, SUITE 4530  
9 MINNEAPOLIS, MINNESOTA 55402

10 RYAN L. THOMPSON, ESQ.  
11 WATTS GUERRA, LLP  
12 5250 PRUE ROAD, SUITE 525  
13 SAN ANTONIO, TEXAS 78240

14 FOR THE DEFENDANTS: DOUGLAS R. MARVIN, ESQ.  
15 WILLIAMS & CONNELLY LLP  
16 725 12TH STREET NORTHWEST  
17 WASHINGTON, DC 20005-5901

18 KENNETH KING, ESQ.  
19 NINA GUSSACK, ESQ.  
20 PEPPER HAMILTON, LLP  
21 620 EIGHTH AVENUE  
22 NEW YORK, NEW YORK 10018

23 AMY J. LAURENDEAU, ESQ.  
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LOREN BROWN, ESQ.  
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SAN DIEGO, CALIFORNIA; TUESDAY, JULY 1, 2014; 11:18 A.M.

**DEPUTY CLERK:** NUMBER ONE ON CALENDAR, CASE NUMBER 13MD2452, IN RE INCRETIN MIMETICS PRODUCTS LIABILITY LITIGATION.

**THE COURT:** AND GOOD MORNING TO ALL. AND WE HAVE COMPLETED A RATHER LENGTHY IN-CHAMBERS CONFERENCE. MY APOLOGIES FOR THOSE WHO HAVE WAITED FOR US TO COMPLETE, BUT THERE HAS BEEN A LOT TO DISCUSS AS WE ENTER THE CRITICAL PHASE IN THE CASE. AND I WILL DETAIL WHAT WE'VE DONE ON VARIOUS ISSUES AND HOW THE CASE IS PROPOSED TO PROCEED ON A NUMBER OF FRONTS.

SO LET ME HAVE COUNSEL THAT ARE PRESENT GO AHEAD AND MAKE THEIR APPEARANCES FOR THE RECORD, AND WE CAN TAKE ROLL OF THOSE ON THE PHONE. AND I WILL REPORT THE COURT'S ORDERS AFTER THE DISCUSSION ON A VARIETY OF ISSUES.

SO STARTING WITH THE PLAINTIFFS, WOULD YOU FOLKS LIKE TO GO AHEAD AND STATE YOUR APPEARANCES FOR THE RECORD.

**MR. SHKOLNIK:** GOOD MORNING, YOUR HONOR. HUNTER SHKOLNIK, ON BEHALF OF PLAINTIFFS.

**MR. JOHNSON:** YOUR HONOR, MICHAEL JOHNSON ON BEHALF OF PLAINTIFFS.

**MR. THOMPSON:** YOUR HONOR, RYAN THOMPSON ON BEHALF OF PLAINTIFFS.

**THE COURT:** AND THE OTHER PLAINTIFFS?

**MR. DEPEW:** FROM THE JCCP, YOUR HONOR, BRIAN DEPEW ON

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1 BEHALF OF PLAINTIFFS.

2 **MS. CROOKE:** GOOD MORNING, YOUR HONOR. ELIZABETH  
3 CROOKE FOR THE JCCP PLAINTIFFS, ALSO.

4 **MS. ZAIC:** GOOD MORNING, YOUR HONOR. JULIA ZAIC ON  
5 BEHALF OF PLAINTIFFS.

6 **MR. PREUSS:** GOOD MORNING, YOUR HONOR. THOMAS PREUSS  
7 ON BEHALF PLAINTIFFS.

8 **THE COURT:** THANK YOU, SIR.

9 **MR. KENNERLY:** MAX KENNERLY ON BEHALF OF PLAINTIFFS.

10 **MS. LOUTEY:** KIM LOUTEY ON BEHALF OF PLAINTIFFS.

11 **MS. LEIBFARTH:** LINDA LEIBFARTH ON BEHALF OF  
12 PLAINTIFFS.

13 **MR. CLARK:** TIMOTHY CLARK ON BEHALF OF PLAINTIFFS AND  
14 THE JCCP.

15 **MR. BERN:** MARC BERN ON BEHALF OF PLAINTIFFS.

16 **MR. DRAKULICH:** NICK DRAKULICH ON BEHALF OF  
17 PLAINTIFFS.

18 **MS. BLATT:** GAYLE BLATT, YOUR HONOR, ON BEHALF OF  
19 PLAINTIFFS.

20 **THE COURT:** MR. BERG.

21 **MR. BERG:** MICHAEL BERG FOR PLAINTIFFS, YOUR HONOR.

22 **THE COURT:** AND THEN LET'S GO TO THE DEFENSE SIDE FOR  
23 THEIR INTRODUCTIONS OF THOSE IN COURT.

24 **MR. MARVIN:** YOUR HONOR, DOUGLAS MARVIN ON BEHALF OF  
25 MERCK.

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1           **MS. GUSSACK:** NINA GUSSACK FOR ELI LILLY.

2           **MR. KING:** KENNETH KING FOR ELI LILLY.

3           **MS. LAURENDEAU:** GOOD MORNING, YOUR HONOR. AMY

4 LAURENDEAU FOR AMYLIN PHARMACEUTICALS.

5           **MR. BROWN:** LOREN BROWN FOR NOVO NORDISK.

6           **MS. LEVINE:** HEIDI LEVINE FOR NOVO NORDISK.

7           **THE COURT:** MS. TURNER?

8           **MS. TURNER:** VICKIE TURNER FOR MERCK.

9           **MS. REYES:** ANA REYES FOR MERCK.

10          **MR. BOEHM:** PAUL BOEHM FOR MERCK.

11          **MR. SWINTON:** STEVE SWINTON FOR ELI LILLY.

12          **THE COURT:** AND, SIR, ARE YOU HERE ON THIS CASE?

13          **MR. KING:** MICHAEL KING FOR NOVO NORDISK, YOUR HONOR.

14          **THE COURT:** THANK YOU.

15                 AND LET'S SEE. I THINK WE'RE LOSING PEOPLE ON THE

16 PHONE, BUT, MS. LIU, ARE YOU THERE?

17          **MS. LIU:** GOOD MORNING, YOUR HONOR.

18          **THE COURT:** I SHOULD SAY, JUDGE HIGHBERGER, ARE YOU

19 THERE?

20          **JUDGE HIGHBERGER:** I AM, INDEED.

21          **THE COURT:** AND, MR. HOERMAN, ARE YOU THERE?

22          **MR. HOERMAN:** I AM HERE, JUDGE.

23          **THE COURT:** HOW ABOUT ROBERT MOSIER?

24          **MR. MOSIER:** HERE, YOUR HONOR.

25          **THE COURT:** JESSICA VANDEN BRINK? I'LL SCRATCH THAT.

1 LAUREN WELLING?

2 **MS. WELLING:** HERE, YOUR HONOR.

3 **THE COURT:** DAVID MCMASTER?

4 **MR. MCMASTER:** HERE, YOUR HONOR.

5 **THE COURT:** SASHA COFFINER?

6 **MS. COFFINER:** HERE, YOUR HONOR.

7 **THE COURT:** MICHAEL GOETZ?

8 **MR. GOETZ:** I AM HERE, YOUR HONOR.

9 **THE COURT:** RAY WILLIAMS?

10 **MR. WILLIAMS:** HERE, YOUR HONOR.

11 **THE COURT:** TRIPP SEGARS?

12 **MR. SEGARS:** YES, YOUR HONOR.

13 **THE COURT:** DAVID DEARING?

14 **MR. DEARING:** HERE, YOUR HONOR.

15 **THE COURT:** CAMILLE EDWARDS?

16 HOW ABOUT NEAL ELLIOTT, JR.?

17 **MR. ELLIOTT:** HERE, YOUR HONOR.

18 **THE COURT:** GREGORY VIDRINE?

19 HOW ABOUT ROBERT JAMES?

20 **MR. JAMES:** HERE, YOUR HONOR.

21 **THE COURT:** JOSEPH WAECHTER?

22 **MR. WAECHTER:** YES, YOUR HONOR. I'M HERE.

23 **THE COURT:** LORI RESTAINO?

24 KENNETH PEARSON?

25 **MR. PEARSON:** GOOD MORNING, YOUR HONOR.

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1           **THE COURT:**   TIM BROWN.

2           **MR. BROWN:**   HERE, YOUR HONOR.

3           **THE COURT:**   ANDREW WILLIAMS?

4           **MR. WILLIAMS:**   PRESENT.

5           **THE COURT:**   PAUL STEVENS.

6           **MR. STEVENS:**   HERE, YOUR HONOR.

7           **THE COURT:**   PETER SNOWDON?

8           **MR. SNOWDON:**   HERE, YOUR HONOR.

9           **THE COURT:**   SCOTT EDSON?

10          **MR. EDSON:**    HERE, YOUR HONOR.

11          **THE COURT:**   ANDY JOHNSON?

12          **MR. JOHNSON:**   HERE.

13          **THE COURT:**   RAYMOND WILLIAMS?

14          **MR. WILLIAMS:**   UNLESS THERE ARE TWO, I AM HERE, YOUR  
15 HONOR. I THINK YOU CALLED ME EARLIER.

16          **THE COURT:**   I DID? THERE IS AN ANDREW WILLIAMS AND  
17 RAYMOND WILLIAMS.

18          **MR. WILLIAMS:**   I MIGHT HAVE ANSWERED ON BEHALF OF  
19 ANDREW. I APOLOGIZE.

20          **THE COURT:**   IS ANDREW THERE? APPARENTLY NOT.  
21 RAMON LOPEZ?

22          **MR. WILLIAMS:**   YOUR HONOR, I AM HERE. I AM ANDREW  
23 AND I'M HERE. I'M THE ONE WHO SAID PRESENT.

24          **THE COURT:**   OH, OKAY.

25                 HOW ABOUT RAMON LOPEZ?

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1           **MR. LOPEZ:**   RAMON LOPEZ IS HERE, YOUR HONOR.

2           **THE COURT:**   KIMBERLY BARONE BADEN?

3           **MS. BADEN:**   HERE, YOUR HONOR.

4           **THE COURT:**   KEITH ALTMAN?

5           HOW ABOUT CHAFICA SINGHA?

6           **MS. SINGHA:**   HERE, YOUR HONOR.

7           **THE COURT:**   THOMAS HAKLAR?

8           **MR. HAKLAR:**   GOOD MORNING, YOUR HONOR.

9           **THE COURT:**   JOHN RESTAINO?

10          KEN BRENNAN?

11          **MR. BRENNAN:**   HERE, YOUR HONOR.

12          **THE COURT:**   DAE YEOL LEE?

13          SHAYNA SACKS?

14          NEIL OVERHOLTZ?

15          **MR. OVERHOLTZ:**   YES, YOUR HONOR.   I'M HERE.

16          **THE COURT:**   NATHAN BESS?

17          ANYBODY I MISSED THAT IS ON THE PHONE THAT I DIDN'T  
18          CALL?

19          **MR. PLATTENBERGER:**   YES, YOUR HONOR.   THIS IS JACOB  
20          PLATTENBERGER FROM TOR HOERMAN LAW, ON BEHALF OF PLAINTIFFS.

21          **THE COURT:**   OKAY.   THANK YOU.

22          ANYBODY ELSE?

23          **MS. HEACOX:**   CATHERINE HEACOX FROM THE LANIER LAW  
24          FIRM, FOR PLAINTIFFS.

25          **THE COURT:**   GIVE ME YOUR NAME AGAIN?



1           **MS. HEACOX:** CATHERINE HEACOX, H-E-A-C-O-X.

2           **THE COURT:** GOT IT. AND ANYBODY ELSE?

3           **MS. NASASH:** MELISSA NASASH FROM THE LANIER LAW FIRM,  
4 ON BEHALF OF PLAINTIFFS.

5           **THE COURT:** COULD YOU SPELL THAT LAST NAME? I DIDN'T  
6 HEAR IT.

7           **MS. NASASH:** SURE. N-A-S-A-S-H.

8           **THE COURT:** THANKS. ANYBODY ELSE? SOUNDS LIKE NOT.

9 ALL RIGHT. WE WORKED THIS MORNING INDUSTRIOUSLY ON  
10 THE AGENDA THAT WAS FILED JOINTLY BY THE PARTIES. IT'S  
11 DOCUMENT 500 ON THE DOCKET. AND I WILL GO THROUGH THIS AND  
12 REPORT THE STATUS OR OTHERWISE THE DISPOSITION AND DIRECTION  
13 THAT THE COURT HAS TAKEN. AND I WILL DO THAT AND THEN WE'LL  
14 GIVE JUDGE HIGHBERGER A CHANCE TO COMMENT WITH REGARD TO THE  
15 STATE PROCEEDINGS OR OTHER INFORMATION HE FEELS RELEVANT.

16 THE FIRST TOPIC WAS THE STATUS OF DOCUMENT  
17 PRODUCTIONS, WHICH INCLUDED THE SUB-ISSUES OF CERTIFICATION,  
18 THE POTENTIAL OF ADDITIONAL CUSTODIAL FILES THE PLAINTIFFS MAY  
19 REQUEST, AND THE DATE AND SCOPE OF DEFENDANT LILLY'S  
20 PRODUCTION.

21 CERTIFICATION AS THE FIRST STEP, WHICH WOULD RELATE  
22 TO THE COMPLETENESS OF THE DISCLOSURES ORDERED BY THE COURT,  
23 FOR THINGS LIKE FDA FILES AND WHATNOT.

24 MERCK HAS FILED A DOCUMENT INDICATING THAT THEY ARE  
25 CERTIFYING THE COMPLETENESS OF THEIR RESPONSE TO THE COURT'S

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1 ORDERED PRODUCTION.

2 NOVO NORDISK HAS COMPLETED ITS PRODUCTION AS OF  
3 JUNE -- I THINK IT WAS JUNE 16TH, AND IS GOING TO CHECK ON THE  
4 LANGUAGE OF ITS CERTIFICATION, TO MAKE SURE IT IS CERTIFIED AS  
5 COMPLETE TO THE BEST OF THEIR ABILITY, WITHOUT ANTICIPATED OR  
6 INTENDED SUPPLEMENTS TO COME.

7 AMYLIN IS ABOUT TWO WEEKS AWAY FROM COMPLETING THE  
8 PRODUCTION AND CERTIFYING THE DISCLOSURES TO THE EXTENT  
9 REQUIRED BY THE COURT.

10 AND LILLY IS APPROXIMATELY FOUR WEEKS AWAY, AS A BEST  
11 GUESS, OF BECOMING COMPLETE.

12 AND THEN CERTIFICATION WOULD MEAN, THEN, TO THE BEST  
13 OF THE ABILITY, ALL DOCUMENTS RELATIVE TO THE COURT'S DIRECTED  
14 DISCLOSURES WOULD BE DONE.

15 VERIFICATION WITH REGARD TO THE INTERROGATORIES AND  
16 DOCUMENT REQUESTS THAT MAY OR MAY NOT OVERLAP WITH SOME OF THE  
17 COURT-ORDERED PRODUCTION, THOSE VERIFICATIONS SHOULD BE  
18 COMPLETE AS OF THE DATE OF PRODUCTION OR RESPONSE.

19 AND THEN THE COURT WILL VIEW THAT AS A FINITE DATE  
20 FOR COMPLETION FOR PURPOSES OF ANY LATER-DISCOVERED OR  
21 LATE-FILED, LATE-REVEALED DOCUMENTS, SHOULD AN ISSUE CREEP UP.

22 SO THAT'S THE CERTIFICATION STATUS. THAT ALSO  
23 SUBSUMED LILLY'S PRODUCTION ISSUE, AS FAR AS THE DOCUMENTS.

24 AND THEN LILLY WAS ALSO WORKING ON A DATE FOR THE  
25 CUTOFF OF DISCOVERABLE INFORMATION AND THE CUSTODIANS THAT

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1 WOULD BE RESPONSIVE TO THE DISCLOSURES REQUIRED BY THE COURT,  
2 OR THE INTEREST OF THE PLAINTIFFS WITH REGARD TO SOME OF THE  
3 DISPOSITIVE ISSUES THAT WILL BE BROUGHT IN THE EARLY GOING.

4 AND LILLY REPORTED THAT THEY HAVE NOW TEN CUSTODIANS  
5 WHOSE FILES WOULD BE PRODUCED, WOULD BE MADE AVAILABLE FOR  
6 DEPOSITION. AND THE CUTOFF DATE WOULD BE THE SAME AS ALL OF  
7 THE OTHER CUSTODIANS FOR OTHER DEFENDANTS. THAT DATE BEING  
8 FEBRUARY 28TH OF 2014 AS THE END DATE FOR THE RELEVANT  
9 UNIVERSE, FOR PURPOSES OF DISCOVERY IN THE CASE. SO THAT IS  
10 ISSUE ONE.

11 THE PLAINTIFFS HAVE ANYTHING TO ADD THAT I MISSED OR  
12 MISSTATED ON THAT PARTICULAR SET OF ISSUES?

13 **MR. JOHNSON:** NO, YOUR HONOR.

14 **THE COURT:** HOW ABOUT ON THE DEFENSE SIDE?

15 **MS. LEVINE:** YOUR HONOR, ON BEHALF OF NOVO NORDISK,  
16 JUST A SLIGHT TWEAK. OUR CERTIFICATION IS ACTUALLY COMPLETE.  
17 IT MIRRORS THE LANGUAGE OF MERCK. IT DISCLOSES THAT WE HAVE  
18 COMPLETED THE FDA AND THE EMA PRODUCTIONS AND EVERYTHING WE'VE  
19 PRODUCED TO DATE, IN TERMS OF DOCUMENTS.

20 I THINK WHAT WE AGREED TO AMEND IS OUR WRITTEN  
21 DISCOVERY RESPONSES -- ANSWERS TO INTERROGATORIES AND RESPONSES  
22 TO REQUESTS -- SO THAT INSTEAD OF BEING IN THE FUTURE TENSE  
23 THEY ARE THE PAST TENSE.

24 **THE COURT:** THANK YOU FOR REMINDING ME. THAT IS  
25 BETTER SAID AND THAT IS THE STATUS AS TO AMYLIN (SIC).

1           **MS. LEVINE:**   NOVO.

2           **THE COURT:**   MS. GUSSACK, WERE YOU GOING TO SAY  
3           SOMETHING ABOUT LILLY?

4           **MS. GUSSACK:**   YES, YOUR HONOR.   I WAS JUST GOING TO  
5           MAKE THE OFFERS -- IN AN EFFORT TO MAKE SURE THAT OUR  
6           PRODUCTION OVER THE NEXT 30-SOME-ODD DAYS DOESN'T IMPAIR ANY  
7           FORWARD MOVEMENT -- THAT IF THE PLAINTIFFS WOULD ADVISE US AS  
8           TO WHICH CUSTODIAN THEY WANT FIRST FULLY COMPLETED.   WE HAVE  
9           RIGHT NOW THE ABILITY TO AT LEAST PRIORITIZE THE SUPPLEMENTAL  
10          PRODUCTION THAT WE'RE DOING, IF THAT WOULD BE OF ASSISTANCE.  
11          OTHERWISE, WE'RE JUST GOING TO PLOW THROUGH AS WE BELIEVE  
12          APPROPRIATE.

13                 BUT IN THE NEXT DAY OR TWO IF PLAINTIFFS WERE TO  
14          ADVISE US WHO THEY WANTED FIRST, SECOND, AND THIRD, WE COULD  
15          MOVE THE OPERATION AROUND.

16           **THE COURT:**   OKAY.   SO LET THEM KNOW IF THAT IS  
17          HELPFUL FROM YOUR STANDPOINT, AFTER YOU HAVE HAD A CHANCE TO  
18          THINK ABOUT IT.

19                 LET'S SKIP OVER NUMBER TWO.   GO TO NUMBER THREE ON  
20          THE AGENDA.   THAT WAS THE DEPOSITION PROTOCOL.   COUNSEL HAVE  
21          BEEN WORKING ON THAT.   AND THERE MAY BE A FEW ADJUSTMENTS TO BE  
22          MADE IN LIGHT OF THE SCHEDULE THAT I HAVE CREATED FOR THE CASE,  
23          THAT I WILL GET TO HERE IN A MINUTE.   BUT OTHERWISE, IT'S  
24          ANTICIPATED THAT THAT WILL BE SUBMITTED VERY SOON FOR ENTRY BY  
25          THE COURT.

1 THE SAME IS TRUE WITH REGARD TO THE PRIVILEGED  
2 PROTOCOL, THE LOG FORMAT. IT IS IN PROCESS, AND THE PARTIES  
3 HOPE TO HAVE THAT COMPLETE SOON. THAT IS NUMBER 4.

4 NUMBER 5, SEALING OF DOCUMENTS AND THE PROTECTIVE  
5 ORDER. THE NOTICE PROVISIONS ARE BEING COMPLETED. AND THAT IS  
6 HOPED TO BE SUBMITTED SOON, AND COMPLIANCE WITH THE STATE RULES  
7 OF COURT OR THE JCCP WILL BE CONSIDERED WHERE RELEVANT THERE.

8 FROM THE PLAINTIFFS' STANDPOINT, IS THAT A FAIR,  
9 ALBEIT BRIEF, ASSESSMENT OF POINTS THREE, FOUR, AND FIVE ON THE  
10 AGENDA?

11 **MR. JOHNSON:** YOUR HONOR, IT IS.

12 **THE COURT:** HOW ABOUT FROM THE DEFENSE? WOULD YOU  
13 FOLKS CONCUR ON THAT?

14 **MR. KING:** YES, YOUR HONOR.

15 **MR. MARVIN:** YES.

16 **THE COURT:** YES. NUMBER SIX ON THE AGENDA WAS THE  
17 DECEDENT ESTATE ORDER -- PERHAPS MORE PROPERLY STATED A  
18 DECEDENT ESTATE STIPULATION -- TO ALLOW FOR A NOVEL BUT  
19 IMPORTANT APPROACH TO DOCUMENTING THE REAL PARTY IN INTEREST,  
20 OR AT LEAST CREATING AN INTERIM PLAN TO DO THAT.

21 COUNSEL WILL BE DISCUSSING THAT FURTHER AS IT RELATES  
22 TO THE ISSUE OF MINORS, DECEDENT ESTATE -- DECEDENT  
23 TESTAMENTARY DOCUMENT POTENTIALS AND THE EXISTENCE OF A SUNSET  
24 PROVISION. THE COURT HAS URGED THE ASSIGNED REPRESENTATIVES  
25 FOR EACH SIDE TO CONTINUE ON THAT AND CONTACT THE COURT IF

1 THERE IS A NEED TO DISCUSS FURTHER IN THE SHORT TERM, AND THEN,  
2 PERHAPS, NEGOTIATE OR ADJUDICATE WHAT WE FEEL WE CAN ALL LIVE  
3 WITH ON THOSE ENDS. SO THAT IS THE OPEN OFFER TO THOSE WORKING  
4 ON THAT.

5 ANYTHING ELSE ON THE DECEDENT ESTATE STIPULATION FROM  
6 THE PLAINTIFFS' SIDE, FOR NOW?

7 **MR. THOMPSON:** NO, YOUR HONOR.

8 **THE COURT:** HOW ABOUT THE DEFENSE SIDE, MR. MARVIN?

9 **MR. MARVIN:** NO, YOUR HONOR.

10 **THE COURT:** NUMBER SEVEN IS THE COORDINATION OF THE  
11 THYROID CANCER CASES. THEY HAVE ALL BEEN NOW COORDINATED  
12 OUTSIDE OF THE MDL AND TO BE HANDLED JOINTLY BY THE COURT.

13 COUNSEL ARE WORKING ON MASTER PLEADINGS, WITH AN  
14 ANTICIPATED STAY ON THE ANSWERS UNTIL THE MASTER PLEADINGS CAN  
15 BE PUT INTO PLACE. THAT WOULD INCLUDE MASTER COMPLAINT/MASTER  
16 ANSWER.

17 IT'S ANTICIPATED THAT MANY OF THE PROTOCOLS THAT HAVE  
18 BEEN PUT IN PLACE OR WILL SOON BE IN PLACE IN THE MDL WILL  
19 APPLY OR BE UTILIZED IN THE THYROID CANCER CASES.

20 THE JCCP-STYLE PLAINTIFFS' QUESTIONNAIRE INFORMATION,  
21 I BELIEVE, IS CONTEMPLATED TO BE USED IN THOSE. BUT ALL OF  
22 THAT IS IN PROCESS, AND WE'LL TALK ABOUT THE STATUS OF THAT NO  
23 LATER THAN THE NEXT CONFERENCE THAT IS NOW SET FOR  
24 AUGUST 14TH IN THIS COURT.

25 IS THAT A FAIR RENDITION OF WHAT WE ARE DOING ON

1 THOSE CASES, ON THE PLAINTIFFS' SIDE?

2 **MR. THOMPSON:** I BELIEVE SO, YOUR HONOR.

3 **THE COURT:** HOW ABOUT ON THE DEFENSE, MR. KING?

4 **MR. KING:** YES, YOUR HONOR.

5 **THE COURT:** OKAY. SO NUMBERS EIGHT AND NINE I'LL  
6 DISCUSS CONCURRENTLY. THE REQUEST IS MADE TO RELIEVE COUNSEL,  
7 OR AT LEAST BE MORE FLEXIBLE, WITH REGARD TO THE 45-DAY RULE  
8 THAT IS ENFORCED BY JUDGE DEMBIN AS IT RELATES TO DISCOVERY  
9 MOTIONS IN GENERAL, INCLUDING NOW TO THIS MDL.

10 AND I HAVE DETERMINED THAT IT IS AN IMPRACTICAL  
11 DEADLINE AS IT RELATES TO THE NOW MILLIONS OF DOCUMENTS AND  
12 ELECTRONIC INFORMATION THAT HAS BEEN AND IS CONTINUING TO BE  
13 PRODUCED TO THE PLAINTIFFS. AND SO I'M GOING TO RELIEVE THE  
14 PARTIES OF THAT OBLIGATION, USING, INSTEAD, A MORE LIBERAL,  
15 REASONABLE DILIGENCE STANDARD, SUCH THAT COUNSEL NEED TO  
16 REASONABLY MOVE FORWARD WHEN THEY DISCOVER DISPUTES WITH REGARD  
17 TO PRODUCTIONS OF ANY OF THE DISCOVERY IN THE CASE.

18 AND IN THAT STEAD, LOGISTICALLY, I'M GOING TO  
19 UNDERTAKE THE DISCOVERY-RELATED ISSUES DIRECTLY, CONCERNING THE  
20 CURRENT STATUS QUO, AS IT WILL LEAD US TO ISSUES OF FIRST  
21 PREEMPTION AND THEN GENERAL CAUSATION; HOPING THAT THAT WILL  
22 MOVE THE SCHEDULE FASTER, SINCE I HAVE A GREAT DEAL MORE  
23 KNOWLEDGE NOW OF THIS PARTICULAR LITIGATION THROUGH THE BENEFIT  
24 OF THE STATUS CONFERENCES THAT I HAVE PARTICIPATED IN WITH, I  
25 BELIEVE, COUNSEL ON BOTH SIDES.

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1 THE LOGISTICS WILL BE THAT COUNSEL NEED TO MEET AND  
2 CONFER AND DECIDE THE NECESSARY PAGE LIMITS BY AGREEMENT, TO  
3 ADDRESS THE ISSUES THAT ARE ON. THAT WOULD RELIEVE THEM OF THE  
4 FIVE-PAGE LIMIT THAT HAS BEEN UTILIZED BY JUDGE DEMBIN. AND  
5 SINCE HE'S NOT DOING IT, I DON'T THINK HE'LL MIND.

6 SO IS THAT A FAIR ASSESSMENT OF WHAT WE HAVE DONE  
7 WITH ITEMS EIGHT AND NINE, ON THE PLAINTIFFS' SIDE?

8 **MR. SHKOLNIK:** YES, YOUR HONOR.

9 **THE COURT:** HOW ABOUT ON THE DEFENSE SIDE?

10 **MR. MARVIN:** YES, YOUR HONOR.

11 **THE COURT:** AND AS I SAID, FOR THOSE THAT WEREN'T  
12 PRIVY TO THE CONVERSATION, BOTH SIDES ARE VERY INDUSTRIOUS AND  
13 VERY ZEALOUS IN REGARDS TO THEIR CASES AND THE MANNER IN WHICH  
14 THE MATTER SHOULD PROCEED. AND THE COURT APPRECIATES ALL OF  
15 THAT, EVEN WHEN I DON'T AGREE WITH SOME OF THE POSITIONS. BUT  
16 IT'S MUCH APPRECIATED. AND I WOULD ASSURE THE MEMBERS OF THE  
17 PUBLIC, OR THOSE THAT WEREN'T PRIVY, THAT THE LAWYERS ARE  
18 WORKING ARDENTLY.

19 AND THERE IS A SIGNIFICANT DISPUTE OR DEBATE ABOUT  
20 HOW THE CASE SHOULD BE SCHEDULED IN TERMS OF TIMING. AND THE  
21 COURT HAS CHOSEN, HAVING HEARD THE ARGUMENTS, TO SET A FAIRLY  
22 AGGRESSIVE -- MAYBE SOME WOULD SAY OVERLY AGGRESSIVE, BUT I  
23 WILL JUST SAY A VERY AGGRESSIVE SCHEDULE TO START THIS PROCESS  
24 MOVING.

25 ON AUGUST 14TH, AT 9:00, WE'LL HOLD THE NEXT STATUS



1 CONFERENCE, AT WHICH POINT THE PLAINTIFFS CAN LIST, IN ADVANCE,  
2 THE ISSUES OF ANY GAPS OR LACKING IN THE PRODUCTION OF THE  
3 VARIOUS DEFENDANTS, WHICH MIGHT ALTER SOME OF THESE DATES THAT  
4 I'M SETTING OR MIGHT CAUSE SOME CHANGING IN HOW DEPOSITIONS AND  
5 WHATNOT MIGHT PROCEED.

6 I DON'T WANT TO FORECAST HOW IT'S GOING TO COME OUT,  
7 BUT THERE IS ANY NUMBER OF ALTERNATIVES. AND CERTAINLY IF  
8 THERE IS A NEED TO DISCUSS IT SOONER, COUNSEL CAN ALWAYS ASK  
9 FOR A SOONER STATUS CONFERENCE IF THERE IS A PARTICULAR MATTER  
10 THAT LOOKS LIKE IT'S GOING TO BE A REAL SIGNIFICANT PROBLEM.  
11 BUT NO LATER THAN AUGUST 14TH WE'LL RESOLVE THAT. AND THE  
12 9:00 MEETING FOR THE LEAD COUNSEL AND A 10:00 PUBLIC  
13 CALENDAR -- AT LEAST HOPEFULLY A 10:00 -- TO UPDATE THINGS  
14 FURTHER.

15 BUT FOR NOW, THE COURT IS ORDERING THE DEPOSITIONS OF  
16 THE CUSTODIANS THAT HAVE BEEN IDENTIFIED. THERE ARE,  
17 ESSENTIALLY, 35 THAT HAVE BEEN IDENTIFIED. FOR THOSE KEEPING  
18 TRACK, MERCK HAS TEN CUSTODIANS. LILLY HAS TEN. NOVO NORDISK  
19 HAS SEVEN. AMYLIN EIGHT. SO THAT'S 35.

20 SOME OF THESE FOLKS HAVE BEEN DEPOSED PREVIOUSLY, SO  
21 THERE IS THAT INFORMATION OUT THERE. AND THE COURT HAS URGED  
22 COUNSEL TO SCHEDULE THOSE PERHAPS IN THE MOST MEANINGFUL WAY,  
23 TO GET TO THE ESSENCE OF WHAT WOULD BE THE PREEMPTION AND  
24 CAUSATION ISSUES THAT MIGHT THEN OBTAIN THE NEED FOR ALL 35.  
25 BUT I WILL LEAVE THAT TO THEIR DISCRETION.

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1 SO DEPOS NEED TO BE COMMENCED 9/2 OF 14. I'M SETTING  
2 A COMPLETION DATE FOR THE DEPOSITIONS, OF OCTOBER 17 OF 2014.

3 THAT IS GOING TO LEAD TO A PLAINTIFF DISCLOSURE OF  
4 EXPERTS AND THEIR REPORTS ON BOTH THE PREEMPTION AND CAUSATION  
5 ISSUES. NOVEMBER 17TH FOR PLAINTIFF. DEFENSE WILL FILE THEIR  
6 DISCLOSURES FROM THEIR EXPERTS ON THOSE ISSUES BY  
7 DECEMBER 14TH.

8 PLAINTIFF WILL HAVE REBUTTAL REPORTS, ENVISIONING  
9 THAT THE DEFENSE, IN THEIR DECEMBER 17TH REPORTS, WILL BE  
10 ADDRESSING PREEMPTION, AS THEY BEAR THE BURDEN OR THE FIRST  
11 STEP. AND PLAINTIFFS WILL THEN REBUT JANUARY 30.

12 FROM THERE, DEPOSITIONS OF THE EXPERTS WILL NEED TO  
13 BE COMPLETE BY MARCH 6 OF 2015, WHEREUPON THE PREEMPTION MOTION  
14 CAN BE RE-CALENDARED, RE-FILED, AND ADDRESSED TO BE FOLLOWED  
15 THEREAFTER, AS APPROPRIATE WITH THE GENERAL CAUSATION.

16 I ANTICIPATE SETTING OTHER STATUS CONFERENCES BETWEEN  
17 AUGUST 14TH AND MARCH 6TH, THE DEPOSITION CUTOFF, BUT I THINK  
18 WE'LL DO THAT AS WE GO FORWARD, SETTING THE NEXT CONFERENCE AT  
19 THE AUGUST 14TH HEARING, DEPENDENT UPON WHERE WE STAND ON ANY  
20 OF THE ISSUES THAT I HAVE ADDRESSED PREVIOUSLY.

21 SO AS TO A REPORT OF WHAT I'M DOING TO ALL OF YOU, IS  
22 THAT A FAIR RENDITION OF WHAT THE COURT'S VIEW IS FROM THE  
23 PLAINTIFFS' SIDE?

24 **MR. SHKOLNIK:** YES, YOUR HONOR.

25 **THE COURT:** AND I WOULD SAY EVERYBODY FEELS PAIN

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1 ABOUT SOME OF THIS, SO WE ARE ALL IN GOOD STEAD.

2 IS THIS A FAIR RENDITION ON THIS FROM THE DEFENSE  
3 STANDPOINT?

4 **MR. MARVIN:** YES, IT IS, YOUR HONOR.

5 **THE COURT:** THAT WOULD COMPLETE THE AGENDA.

6 JUDGE HIGHBERGER, LET ME TURN THE FLOOR OVER TO YOU,  
7 SIR, FOR THOUGHTS OR REPORTS YOU WOULD LIKE TO SHARE.

8 **JUDGE HIGHBERGER:** THANK YOU, JUDGE BATTAGLIA.

9 A COUPLE OF COMMENTS. A POINT OF INFORMATION: THE  
10 PANCREATITIS CASE IS PENDING IN THE STATE-COORDINATED MATTER TO  
11 PROCEED. THEY HAVE RECKONED IN THEIR OWN WAY IN TIMES PAST.  
12 THERE WERE TWO PLAINTIFFS SET FOR A SINGLE TRIAL DATE THIS  
13 OCTOBER. I'M BEST ADVISED THAT HAVING DEALT WITH SOME  
14 INTERESTING CHOICE OF LAW QUESTIONS, THE PARTIES HAVE RESOLVED  
15 THE KATZ CASE, LEAVING ONLY THE MCMULLIN CASE FOR OCTOBER.

16 THAT REMAINS ON CALENDAR, ALTHOUGH I BELIEVE THERE  
17 WERE PREDICTIONS THAT A DEFENSE SUMMARY JUDGMENT MIGHT BE IN  
18 THE OFFING.

19 NEXT MAY, WHAT WE CALL TRACK FOUR OF THE PANCREATITIS  
20 CASES ARE SET. WE'RE DOWN TO ABOUT APPROXIMATELY TEN SUCH  
21 CASES AND THEY'RE RIPENING IN THE ORDINARY COURSE.

22 COUNSEL FOR PLAINTIFFS, DID I HEAR MR. DEPEW IN THE  
23 ROOM?

24 **THE COURT:** HE IS HERE.

25 **JUDGE HIGHBERGER:** DO YOU CONCUR WITH THAT STATEMENT

1 ABOUT THE STATUS OF THE PANCREATITIS CASES?

2 MS. CROOKE: THIS IS ELIZABETH CROOKE. YES, WE DO,  
3 YOUR HONOR.

4 JUDGE HIGHBERGER: I DIDN'T HEAR THE RESPONSE.  
5 THAT'S MS. CROOKE, ALSO?

6 THE COURT: YES.

7 JUDGE HIGHBERGER: BUT IT WAS A YES?

8 THE COURT: IT WAS A YES.

9 MS. CROOKE: YES.

10 THE COURT: AND MR. DEPEW IS NOT PROTESTING.

11 JUDGE HIGHBERGER: MR. GOETZ, ANY DISAGREEMENT?

12 MS. CROOKE: I'M SORRY?

13 JUDGE HIGHBERGER: I ASKED MR. GOETZ, FOR DEFENDANT,  
14 TO CONCUR.

15 THE COURT: HE'S ON THE PHONE.

16 MR. GOETZ?

17 MS. LAURENDEAU: THIS IS AMY LAURENDEAU FOR AMYLIN,  
18 YOUR HONOR.

19 JUDGE HIGHBERGER: ANY COUNSEL FOR LILLY OR AMYLIN IN  
20 THE ROOM? MS. LAURENDEAU?

21 THE COURT: SHE IS JUST ABOUT TO SPEAK, JUDGE.

22 MS. LAURENDEAU: YES, YOUR HONOR. IT'S AMY  
23 LAURENDEAU. WE CONCUR WITH YOUR STATEMENTS OF THE STATUS OF  
24 THE JCCP.

25 JUDGE HIGHBERGER: OKAY. TURNING TO PANCREATIC

1 CANCER, OBVIOUSLY THOSE CASES ARE OF EQUAL IMPORTANCE IN THE  
2 COORDINATING PROCEEDING. I CONCUR WITH THE SCHEDULE THAT JUDGE  
3 BATTAGLIA IS SETTING UP. THE NEXT EVENT FOR THE BYETTA CASE IN  
4 MY COURT IS ON JULY 29TH AT 9:30. AND I WILL SET AN ORDER TO  
5 SHOW CAUSE, RETURNABLE ON JULY 29TH AT 9:30, IN DEPARTMENT 307,  
6 WHY THE COURT SHOULDN'T ADOPT THE SAME SCHEDULE FOR DISCOVERY  
7 THAT IS BEING ADOPTED BY THE FEDERAL COURT, FOR PURPOSES OF  
8 RIPENING THE CASE, PARTICULARLY IN REGARD TO A GENERAL  
9 CAUSATION; BUT ALSO INsofar AS ANYBODY WANTS TO RAISE AN ISSUE  
10 OF FEDERAL PREEMPTION AS A DEFENSE IN THE COORDINATED  
11 PROCEEDINGS REGARDING PANCREATIC CANCER.

12 ANY OPPOSITION TO THE ORDER TO SHOW CAUSE SHOULD BE  
13 SERVED BY JULY 14TH. ANY REPLY IN SUPPORT OF THE ORDER BEING  
14 ADOPTED SHOULD BE SERVED BY JULY 24.

15 AND THE OTHER POINT OF NOTE IS THAT WHILE I HAVE BEEN  
16 URGED BY THE PLAINTIFFS IN MY COURT, AS TO THE PANCREATIC  
17 CANCER, TO TRY TO KEEP THINGS MOVING, GET THINGS MOVING, IT WAS  
18 NOTABLE THAT TODAY, AT LEAST AS I HEARD IT, IT WAS THE  
19 DEFENDANTS WHO WERE TRYING TO PULL CUTOFFS FOR DISCOVERY AND  
20 MOTION PRACTICE EARLIER, AND THE PLAINTIFFS FELT THAT THEIR  
21 EFFORTS TO PROPERLY REPRESENT THEIR CLIENTS WOULD REQUIRE THEM  
22 TO BE THOROUGH ENOUGH TO GO THROUGH THE EXTENSIVE MATERIAL THEY  
23 HAVE RECENTLY RECEIVED, MILLION OF PAGES. THAT MIGHT WELL BE  
24 THE CASE, WHICH IS, I ASSUME, WHY PLAINTIFFS' COUNSEL ASKED FOR  
25 THE EXTRA TIME.

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1 BUT I WOULD BE INTRIGUED IF THE PLAINTIFFS COME  
2 BEFORE ME AND ALL OF A SUDDEN WANT AN EXPEDITED SCHEDULE AFTER  
3 HAVING REQUESTED THAT THINGS BE EVEN LESS EXPEDITED THAN WHAT  
4 JUDGE BATTAGLIA IS CURRENTLY ORDERING.

5 SO I WILL WAIT WITH INTEREST TO SEE IF PLAINTIFFS ARE  
6 CONSISTENT IN THE NEXT PROCEEDING IN FRONT OF ME, OR FOR SOME  
7 REASON EXPRESS A DIFFERENT VIEW.

8 I THINK THAT IS ALL I NEED TO SAY, UNLESS PLAINTIFFS'  
9 COUNSEL OR DEFENSE COUNSEL WISH TO RESPOND HERE AND NOW TO THE  
10 LAST OBSERVATION.

11 **THE COURT:** PLAINTIFFS HAVE ANY RESPONSE TO JUDGE  
12 HIGHBERGER'S LAST FEW OBSERVATIONS?

13 **MR. DEPEW:** YES. WE HAVE PREVIOUSLY, ON TWO  
14 OCCASIONS, BROUGHT TO JUDGE HIGHBERGER'S ATTENTION OUR CONCERN  
15 FOR INCOMPLETE PRODUCTION WITH RESPECT TO AMYLIN AND LILLY.  
16 AND WE WERE NOT ANTICIPATING THIS SCHEDULE, ALTHOUGH WE DID  
17 HAVE REASON TO BELIEVE THAT THERE WERE SERIOUS CONCERNS.

18 BUT WHAT I WOULD ASK JUDGE HIGHBERGER IS SHALL WE NOW  
19 FORMALLY BRING A MOTION OR BRING THIS TO YOUR ATTENTION IN A  
20 MORE FULLY DEVELOPED WAY, SINCE YOU ARE NOW SETTING THIS O.S.C.  
21 SCHEDULE FOR JULY?

22 **JUDGE HIGHBERGER:** I WOULD THINK THAT IF THERE IS  
23 SOME UNFINISHED PIECE OF BUSINESS THAT YOU THINK IS NOT  
24 INCAPSULATED WITH WHAT'S HAPPENED OR IS ABOUT TO HAPPEN IN THE  
25 FEDERAL MDL, THAT YOU SHOULD BRING IT TO THE COURT'S ATTENTION

1 ON JULY 29. AND IF YOU THINK IT OUGHT TO BE FORMAL EX PARTE OR  
2 A NOTICED MOTION, IF IT'S STILL TIMELY FOR JULY 29, USE YOUR  
3 GOOD JUDGMENT.

4 **MR. DEPEW:** WE WILL DO THAT, YOUR HONOR. THANK YOU  
5 FOR THAT OPPORTUNITY.

6 **THE COURT:** AND ANYTHING FROM THE DEFENSE SIDE ON THE  
7 JCCP OR JUDGE HIGHBERGER'S STATEMENT?

8 ANYTHING ON THE PLAINTIFFS' SIDE? I WILL GIVE YOU  
9 THE OPPORTUNITY TO BRING IT UP. I THINK WE COVERED ALL OF THE  
10 ISSUES, BUT IF THERE IS ANYTHING ELSE YOU STILL FEEL NEEDS TO  
11 BE SAID, I'LL GIVE YOU THAT CHANCE.

12 **MR. SHKOLNIK:** NO, YOUR HONOR. I THINK WE'VE COVERED  
13 IT ALL.

14 **THE COURT:** HOW ABOUT THE DEFENSE SIDE?

15 **MS. GUSSACK:** NO, SIR.

16 **THE COURT:** OKAY. SO YOU FOLKS ON THE PHONE, THANK  
17 YOU VERY MUCH FOR YOUR PATIENCE.

18 AND JUDGE HIGHBERGER, THANKS AS ALWAYS FOR YOUR  
19 CONTINUED COOPERATION. IT'S MUCH APPRECIATED.

20 AND WE'LL SET OUT AN ORDER FOR THE SCHEDULE FOR THE  
21 CASE AS WE HAVE SET IT, AND CONFIRMING THE NEXT STATUS  
22 CONFERENCE FOR CHECKING ON THESE MANY THINGS AND ADDRESSING,  
23 CERTAINLY, ANY ISSUES WITH REGARD TO THE LACK OF COMPLETENESS,  
24 AS I MENTIONED.

25 SO YOU FOLKS HAVE A GREAT DAY AND A HAPPY 4TH OF

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1 JULY, AND WE'LL BE IN TOUCH.

2 **MR. SHKOLNIK:** THANK YOU, YOUR HONOR.

3 **MR. MARVIN:** THANK YOU, YOUR HONOR.

4 **THE COURT:** WE ARE IN RECESS.

5 (PROCEEDINGS CONCLUDED AT 11:47 P.M.)

6 CERTIFICATION

7 I HEREBY CERTIFY THAT I AM A DULY APPOINTED,  
8 QUALIFIED AND ACTING OFFICIAL COURT REPORTER FOR THE UNITED  
9 STATES DISTRICT COURT; THAT THE FOREGOING IS A TRUE AND CORRECT  
10 TRANSCRIPT OF THE PROCEEDINGS HAD IN THE AFOREMENTIONED CAUSE  
11 ON JULY 1, 2014; THAT SAID TRANSCRIPT IS A TRUE AND CORRECT  
12 TRANSCRIPTION OF MY STENOGRAPHIC NOTES; AND THAT THE FORMAT  
13 USED HEREIN COMPLIES WITH THE RULES AND REQUIREMENTS OF THE  
14 UNITED STATES JUDICIAL CONFERENCE.

15 DATED: JULY 2, 2014, AT SAN DIEGO, CALIFORNIA.

16 S/N  
17 JEANNETTE N. HILL, OFFICIAL REPORTER, CSR NO. 11148

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JULY 1, 2014